



# ARIZONA

## REAL ESTATE BULLETIN

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*On-line Edition*

## John King replaces Ed Ricketts as Deputy Commissioner

John C. King has been named Deputy Commissioner of the Arizona Department of Real Estate, replacing Edwin J. Ricketts who resigned January 3.

"We were extremely sorry to see Ed Ricketts leave the Department," said Real Estate Commissioner Jerry Holt, "and we wish him every success in his new career in the private sector. John King's experience as an attorney and his work with the Department of Insurance make him especially well suited to assume the responsibilities of Deputy Commissioner."

Mr. King was formerly Director and also Chief of the Fraud Unit of the Arizona Department of Insurance which he joined after a 30-year career as a private attorney in Phoenix.

He was born and raised in Charleston, West Virginia. He received a bachelor of arts degree from West Virginia University and a law degree from Harvard University. Upon graduation from law school, he served as a law clerk to the Honorable William E. Orr, Judge of the U.S. Ninth Circuit Court of Appeals in San Francisco.



*John C. King*

After graduating from the U.S. Army Infantry and Intelligence School, he served as an intelligence officer. He then left the Army after two years as the

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## False claims cost licensees \$210,000

Filing false claims for property management fees with the U.S. Department of Housing and Urban Development (HUD) has cost two Phoenix firms and key employees \$210,000.

The defendants, Buddy R. Hale, President of Cash, Banker & Hale, and subcontractors Rexford Co. and partners Allie R. Snipes, Mary Lou Snipes and Larry Snipes were accused of contracting with HUD to work on two area management broker (AMB) contracts and to provide management and related services for single-family property owned by or in the custody of HUD.

The government's complaint, under the False Claims Act, alleged that the defendants knowingly submitted bills to HUD for property management fees when the properties had been sold and the services were not performed. The complaint also included allegations of breach of contract and unjust enrichment. U.S. District Court Judge Paul G. Rosenblatt had already ruled that the defendants breached the HUD contracts and were unjustly enriched by billing for services that were not provided.

Under the agreement, the defendants will pay the government \$210,000, nearly twice the amount of damages, in exchange for dismissal of the action in Federal District Court. The defendants faced a possible judgment under the False Claims Act of treble damages and penalties for submitting improper claims on 1,181 properties that had been sold.

Another AMB contractor, Delbert

*Continued on page 10*

## Megan's Law — explained

*The following is reprinted from Real Estate Today, a publication of Combs, Mack & Lind, P.C., with permission.*

In certain limited circumstances, law enforcement agencies now are required to notify neighbors, local schools, prospective employers and others that a registered sex offender resides in the area.

Convicted sex offenders in Arizona have long been required to register with law enforcement; failure to do so constitutes a felony. Previously, however, that registration information could not be disclosed to the public. With the adoption of Arizona's response to the federal "Megan's Law," local law enforcement agencies now must alert

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## Department streamlines subdivision public report approval process

To expedite the review of subdivision public report applications and the issuance of public reports, the Department has reassigned subdivision investigation responsibilities from the Subdivisions Division to the Department's Investigation and Audit Division.

In addition, all cemetery, subdivision, time-share and membership campground advertising review will be done by the Customer Services Division.

"This will free up subdivision representatives to devote far more of their time to examining applications for public reports," said Commissioner Holt, "and should significantly reduce the time that is required to obtain approval."

An even more significant streamlining of the public report process will occur if Senate Bill 1256, now Senate Bill 1231, (the "Omnibus Real Estate Bill") is passed by the Legislature.

Presently, subdividers are required to obtain an application for a public report, fill in the required information, and submit the application to the Department. A Department examiner then reviews the application and notifies the subdivider of any deficiencies. When the deficiencies are resolved, the examiner drafts the public report which is

then issued to the subdivider. Typically, it presently takes as long as 12 weeks to obtain a public report after the application is submitted.

S.B. 1231 would add subsection 32-2184.04 to Arizona Revised Statutes to allow developers of improved lot subdivisions to draft the public report and submit the draft with certain supporting documentation and required fees.

The legislation requires the Department to assign a registration number to the report within 10 business days. Upon issuance of the registration number, the developer is free to begin sales or leasing activities.

The Department will then spot check public reports and documentation submitted by developers and notify the developer of any deficiencies or unmet requirements. Failure to resolve them "immediately" could result in suspension of the public report or a cease and desist order being issued.

The Department would also have the authority to suspend a public report or impose civil penalties if the deficiency or unmet requirements constitute a material misrepresentation or fraud, resulted in actual damages or pose a danger to the public health, safety or welfare.

## ADRE forms Administrative Actions Division

Cindy Wilkinson, formerly Executive Staff assistant to the Deputy Commissioner, has been named to head the Department's new Administrative Actions Division.

The Division will review completed investigations into alleged violations of subdivision and real estate statutes and Commissioner's Rules then determine appropriate resolution, including mediation, administrative warnings, administrative hearings, consent orders, approval or denial of original and renewal license applications and issuing cease and desist orders. The Division will also administer the Real Estate Recovery Fund.

Ms. Wilkinson will report to Deputy Commissioner John King.

Joining the Department as Recover Fund Administrator under Ms. Wilkinson is Anne Bussert Manross. Ms. Manross was previously the office manager for Gibson & Associates, Inc., in Oak Brook, Ill, a logistics management and asset protection consulting firm.

She has also served as Senior Paralegal for the Phoenix law firm of Combs & Stoops, P.C., who specializes in real estate and securities fraud law, and was a senior paralegal for the Arizona Office of the Attorney General's Financial Fraud Division.

## Does your advertising conform to federal regulations, Commissioner's Rules?

### DOES IT CONFORM TO REGULATION Z?

The Federal Trade Commission has alerted the Department that it is receiving complaints about advertising which violates provisions of Regulation Z, the Truth in Lending Act.

Real estate brokers and mortgage brokers should review their advertising to ensure that it is in compliance with the Act.

Regulation Z requires certain disclosures whenever one of the following "trigger terms"; are used in an advertisement:

- Amount or percent of down payment.
- Number of payments or term of loan.

- Amount of payment.
- Amount of finance charge, including the word "points."

When any above the above terms are included in an advertisement, the following must also be disclosed:

- Amount or percent of down payment.
- Terms of repayment.
- Annual Percentage Rate (APR).

Regulation Z also requires that the APR must be displayed in at least the same size type as the interest rate whenever an interest rate is included in an advertisement.

The Federal Trade Commission requires that the phrase "rates subject to increase after settlement" be included in an adjustable rate (ARM)

advertisement.

If charges of violating Regulation Z are brought by a federal agency against an Arizona real estate licensee, the Department may also take administrative action against the licensee.

### DOES IT CONFORM TO THE COMMISSIONER'S RULES?

#### *Example 1:*

A.A.C. R4-28-502(D) states, "All advertising by licensees, including but not limited to, newspapers, magazines, circulars and business cards, shall include either the name in which the employing broker's license is held or the fictitious name contained on the real estate or cemetery license."

*Continued on page 9*



Jerry Holt

## News From The Commissioner

In the August 1996 issue of the *Arizona Real Estate Bulletin*, we summarized the Department's 1997 "Omnibus Real Estate Bill," which most notably removes some of the more oppressive provisions of existing statutes.

Since the first draft of the legislation, and after review of the proposed legislation by industry trade groups and others who have an interest in how the Arizona real estate industry is regulated, numerous changes have been made.

A summary of the bill, by former Deputy Commissioner Ed Ricketts, was published in the March 1997 issue of the *Arizona Journal of Real Estate & Business* and is reprinted here with permission. The summary has been edited to reflect amendments to the bill which were passed in the Senate Government Reform Committee by a 4-2 margin on February 21.

The 1997 Real Estate Omnibus Bill (originally S.B. 1256, now S.B. 1231) is progressive, even cutting-edge legislation. Commissioner Jerry Holt's philosophy of firm but fair regulation is reflected throughout the bill.

Of particular interest to the industry are provisions which soften or eliminate onerous and unnecessary regulation. The Department began as early as last summer reviewing the bill's contents with industry representatives, whose input was instrumental in the bill's formulation.

Following is a summary of and commentary on some of the more salient provisions of the Omnibus Bill.

### LICENSING

- A new provision forbids the Commissioner from issuing a license to a person convicted of a felony who is incarcerated or on probation or parole resulting from the felony conviction. A provision currently exists which prohibits the Department from renewing a felon's license under similar circumstances. The industry should cheer language like this that preserves the integrity of the real estate profession.

- A real estate designated or employing broker will now be permitted to engage in cemetery and membership camping without having to get a separate

license. Likewise, the broker's sales force may engage in those activities with only the real estate license. Neither cemetery nor membership camping have pre-license or continuing education requirements, so it seems only natural that real estate licensees should be able to perform those activities as well as straight real estate.

- In a paperwork reduction and administrative efficiency move, each real estate school will be required to issue its own certificates of completion to students instead of having to use the Department forms, but each school will be required to certify to the Department that the course work was taken and be required to keep course records for five years.

- License exemptions are added to clarify that hotel, motel, and RV park managers do not require licensure. A limited license exemption is provided for telemarketers under the supervision of a designated broker. Also, a clarification is provided under the attorney exemption making it abundantly clear(er) that an attorney who wants to do real estate must get a real estate license.

- The broker audit clinic will be broken out into both property management and sales areas to accommodate licensees in those specialties. Hopefully, this will allow for more pertinent and targeted instruction in those areas, rather than having a one-size-fits-all class. In addition to having to take the clinic within 90 days of licensure and thereafter every four years, within 90 days of becoming a designated broker the audit clinic must also be taken, unless previously taken within the broker's current licensing period.

- A long time coming, the buyer's broker employment agreement will now have to be in writing. The same requirements as for listing agreements will apply.

### DECRIMINALIZATION

A new statute and several statutory revisions account for a breathtaking concept—decriminalizing the real estate code. This is a much needed overhaul and is truly cutting-edge regulatory reform. Under the current statutes, for example, when a licensee "forgets" to renew, yet keeps on practicing, the licensee has committed a class 6 felony. Likewise, a subdivider who fails to amend a public report for a material change is guilty of a class 5 felony.

S.B. 1231 eliminates the class 6 and class 5 felonies where they didn't make sense, like in the

above examples which, incidentally, are virtually never criminally prosecuted. The class 6 felony will now only apply to unlicensed activity when a broker or sales license is required but the license was never obtained. A class 5 felony will apply only to activity without, but requiring, a public report.

There is a hold harmless provision which allows a person who inadvertently acts in a capacity requiring a license to escape the class 6 or 5 felony violation if immediate action is taken to correct the violation and to get properly licensed or registered.

### PROPERTY MANAGEMENT

The requirement to keep residential rental agreements for three years is proposed to be reduced to one year. This will conform to the one year statute of limitations for bringing a lawsuit and will reduce the multihousing industry's need for mini-storage.

### SUBDIVISIONS

Commissioner Holt has embraced the philosophy that regulation should serve the noble purpose of protection of the public interest without being unnecessarily burdensome or onerous on the regulated industry. He has further expressed his belief that the Real Estate Department should not adversely affect economic development. A proposed provision puts meat on these philosophical bones.

If S.B. 1231 passes, improved lot subdividers may opt to produce their own public reports. The subdivider will be able to choose between going through the Department's subdivision review process or going it alone. My guess is that all improved lot subdividers will soon be doing their own public reports, rather than wait the ten plus weeks for the Department to produce the public report. That period of time has historically had an unreasonable economic impact on subdividers.

Although the Department has provided much needed and useful flexibility for subdividing through changes in the lot reservation and conditional sales exemption, waiting months to close an escrow because the public report is not ready is simply unacceptable in the new-home industry. The proposed processing alternative is a welcome deregulation of a mature industry.

### UNSUBDIVIDED LANDS

Virtually the same language is proposed for unsubdivided land developments (so called 40's or ranches) as for the improved lot subdivisions discussed above. The only substantial difference is that this provision will be mandatory on all unsubdivided land developments while the improved lot subdivision provision is optional to the subdivider.

The bill now goes to the Senate Rules Committee to be checked for Constitutionality and then to a vote of the entire Senate membership. From there, if passed, it goes to the House of Representatives where we start the process all over again. Wish me luck. I'm going to need it.



## ARIZONA REAL ESTATE BULLETIN

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## 1997 Schedule of Broker Audit Clinics

A.R.S. § 32-2136 requires all newly licensed real estate brokers to attend a Broker Audit Clinic presented by the Department within 90 days of issuance of their original broker's license. Effective July 17, 1994, all real estate brokers must also attend a Broker Audit Clinic once during every four-year period. Brokers who attended an audit clinic before July 17, 1994, must attend another clinic before July 17, 1998.

**Seating is limited and reservations are required.** To make a reservation for a Phoenix clinic, call the Department's Customer Services Division at (602) 468-1414, extension 100. In Tucson, call (520) 628-6940. Those who fail to make reservations will be turned away if seating is not available. Brokers who attend will receive three hours of continuing education credit in the category of Commissioner's Rules.

The following is the schedule of Clinics to be offered in Phoenix and Tucson during the remainder of 1997. Additional clinics may be scheduled from time to time at other locations in Phoenix and in rural areas.

### PHOENIX

Industrial Commission Auditorium  
800 W. Washington  
**Noon - 3 p.m.**

March 21  
April 18  
May 23  
June 27  
July 18  
August 29  
September 19  
October 24  
November 21  
December 19

### TUCSON

State Office Building  
400 W. Congress, Room 158  
**8:30 a.m. - 11:30 a.m.**

March 20  
April 17  
May 22  
June 26  
July 17  
August 28  
September 18  
October 23  
November 20  
December 18

The mission of the Arizona Department of Real Estate is to safeguard and promote the public interest through timely and capable assistance, fair and balanced regulation, and sound and effective education.



## ADMINISTRATIVE ACTIONS

### CEASE AND DESIST ORDERS

CD96-0010

**All Seasons Resorts, Inc., All Seasons Realty, Inc., Johnny W. Griffith and Jeffrey B. Blair**

DATE OF ORDER: December 20, 1996

FINDINGS OF FACT: All Seasons Resorts is an Arizona time-share developer. All Seasons Realty is a corporate real estate broker owned by All Seasons Resorts. Griffith is the designated broker for All Seasons Realty. Blair is an unlicensed individual who is regional marketing director for All Seasons resorts.

On December 18, 1996, A Department investigator, acting on a tip, contacted a telemarketer employed by a vendor broker engaged by All Seasons Resorts/All Seasons Realty. The telemarketer ("Dana"), solicited the investigator to attend a time-share presentation in return for a Carnival Cruise Package. The cruise promotion had not been approved by the Department. Further, Dana misrepresented the conditions for receiving the cruise by stating there were no exclusion dates for going on the cruise, and stated there was no participation charge for the cruise other than for traveling to the departure location. Dana also stated All Seasons had purchased a large quantity of these cruise packages and had been offering the packages for three weeks.

The cruise promotion had been submitted to the Department on previous occasions and had been denied each of those occasions due to deficiencies.

In a December 18, 1996 meeting between the Department investigator and Blair, Blair informed the investigator that he was in charge of all promotional activity for All Seasons, including the distribution of all approved promotional packages to vendor brokers. When confronted with the discovered use by a vendor broker of the unapproved Carnival cruise, he admitted using the promotion prior to approval.

All Seasons has provided the Department with a list of nine couples and individuals to whom the cruise promotion was given in return for attendance at a time-share presentation.

NOW, THEREFORE, the Real Estate Commissioner finds the public health, safety or welfare imperatively requires immediate action. Accordingly, pursuant to A.R.S. § 32-2154(B),

IT IS ORDERED that Respondents immediately cease and desist from the use of the unapproved cruise promotion and any other unapproved time-share promotions.

IT IS FURTHER ORDERED that:

1. Respondents immediately provide each couple or individual previously receiving an unapproved promotional premium with a Department-approved premium, acceptable to the couple or individual, of at least equal value to the Carnival Cruise premium, or pay the couples or individuals the advertised cash value of the Carnival Cruise. All Seasons Resorts/All Seasons Realty shall provide evidence of compliance with this paragraph within 15 days of receipt of this Order.

2. Hereafter, all promotions material submitted to the Department shall be handled through All Seasons Resort's/All Seasons Realty's designated broker.

[Note: Respondents did not exercise their right to request an administrative hearing to contest this order. Editor.]

### REVOCATIONS

H-1739

**William R. Scholtz**  
**Phoenix**

DATE OF ORDER: December 12, 1996

FINDINGS OF FACT: In October 1990, Respondent pleaded guilty in Maricopa County Superior Court to felony and misdemeanor charges resulting from his

dumping automobile shredder waste on State Trust Land near New River, and unlawful excavation of sand and gravel from State Trust Land.

In October 1995, the Department entered into a Consent Order with Respondent granting him a two-year provisional salesperson's license contingent on certain terms and conditions, among them that he make regular and timely payments to satisfy the court's judgment of more than \$25,000.

Respondent failed to make payments for the months of July, August and September, 1996, and Respondent's provisional license was summarily suspended in October 1996.

Respondent was notified of his right to request an administrative hearing, but did not request the hearing.

DISPOSITION: Respondent's real estate salesperson's license revoked.

H-1835

**Jesse A. Romero**

**Huachuca City**

DATE OF ORDER: December 19, 1996

FINDINGS OF FACT: Petitioner filed an original application for a membership camping salesperson's license in September 1995 in which he failed to disclose that he had been convicted in April 1994, in Huachuca City Magistrate Court, of being in actual physical control of a vehicle while under the influence of intoxicating liquor and having a blood alcohol content of 0.1 percent or more within two hours of being in actual physical control of a vehicle.

The Department issued the license, but subsequently learned of the convictions through Petitioner's fingerprint background check.

VIOLATIONS: Petitioner's conduct in failing to disclose his arrest and conviction shows he procured a membership camping salesperson's license by filing an application which was false and misleading, in violation of A.R.S. § 32-2153(B)(1). His conduct shows he is not a person of honesty, truthfulness and good character within the meaning of A.R.S. § 32-2153(B)(7).

DISPOSITION: Petitioner's membership camping salesperson's license revoked.

### LICENSE APPLICATIONS DENIED

H-1837

**Robert Gene Hebner**  
**Phoenix**

DATE OF ORDER: December 19, 1996

FINDINGS OF FACT: In December 1994, Petitioner filed an original application for a real estate salesperson's license in which he disclosed a 1987 conviction for Aggravated Assault and stated that other incidents were disclosed in an application filed with the Department in 1979.

In April 1993, Petitioner was charged in Phoenix Municipal Court with Threatening or Intimidating and Assault (the charges were dismissed), and in October 1989 was found guilty in Maricopa Superior Court of Aggravated Assault, a class 3 felony. He was sentenced to 7.5 years in prison.

In February 1996, Petitioner was convicted in Maricopa County Superior Court of Unlawful Use of Means of Transportation, a class 6 felony. In the same month, Petitioner was convicted in Scottsdale City Court of Assault and Physical Injury, a misdemeanor. VIOLATIONS: Petitioner violated A.R.S. § 32-2153(B)(1) by filing an original application that was false and misleading in that he failed to disclose misdemeanor criminal charges filed against him. His convictions for Aggravated Assault and Unlawful Means of Transportation represent felony convictions within the meaning of A.R.S. § 32-2153(B)(2). His conduct leading to his criminal convictions, his current

probation status and his failure to provide full disclosure on his license application demonstrate he is not a person of honesty, truthfulness and good character within the meaning of A.R.S. § 32-2153(B)(7).

DISPOSITION: Petitioner's license application denied.

H-1836

**Herbert L. Schillerstrom**  
**Peoria**

DATE OF ORDER: December 19, 1996

FINDINGS OF FACT: In his March 1996 real estate salesperson's license application, Petitioner disclosed a misdemeanor conviction in Maricopa County Superior Court for falsely preparing a claim or proof in support of claim for payment from an insurance company for chiropractic treatments he did not render, and a pending criminal matter in the Peoria Justice Court. He further disclosed that the Arizona Board of Chiropractic Examiners had revoked his chiropractic license.

He further told the Department that he continued offering chiropractic treatment to patients after his license had been revoked.

VIOLATIONS: Petitioner's conviction for Attempted Fraudulent Insurance Claim represents a crime of moral turpitude within the meaning of A.R.S. § 32-2153(B)(2). His conduct shows he made substantial misrepresentations within the meaning of A.R.S. § 32-2153(B)(3). His conduct leading to his conviction constitutes fraud or dishonest dealings within the meaning of A.R.S. § 32-2153(B)(5). His conduct and actions show he is not a person of honesty, truthfulness and good character within the meaning of A.R.S. § 32-2153(B)(7).

DISPOSITION: Petitioner's license application denied. [Note: Petitioner filed a Request for Rehearing which was denied on January 21, 1997. Editor.]

H-1842

**David L. McFadden**  
**Glendale**

DATE OF ORDER: December 19, 1996

FINDINGS OF FACT: In September 1995, Petitioner entered into a Consent Order with the Arizona Department of Insurance on behalf of himself and Westside Insurance Agency, Inc., in which he admitted this his conduct and that of Westside constituted a wilful violation of, or wilful noncompliance with Arizona Revised Statutes; misappropriation, conversion or illegal withholding of monies belonging to policyholders or insurers; a conduct of affairs showing Petitioner and Westside to be incompetent or a source of injury or loss to the public or any insurer; misrepresentation in the sale of insurance; and issuing information which was untrue, deceptive or misleading.

Petitioner's and Westside's insurance licenses were revoked and they were ordered to pay restitution of \$10,826.82.

In February 1996, the Department of Insurance revoked the insurance licenses held by Desert Star-Marketing, Inc. The Department of Insurance found that Petitioner, as President of Desert Star, filed a renewal application at a time when Desert Star was ineligible to hold a license because its corporate registration had been revoked. In addition, the renewal application for Desert Star contained the name of an insurer that was not authorized to transact insurance business in Arizona.

In his real estate license application, Petitioner disclosed his problems with the Department of Insurance, but stated that he entered into a Consent Order concerning Westside and "voluntarily surrendered his license" and had fully paid restitution.

The Department of Insurance has no record of restitution being paid.

VIOLATIONS: Petitioner's failure to establish payment of restitution in accordance with the Consent Order

shows that Petitioner attempted to procure a (real estate) license by filing an application which was false or misleading within the meaning of A.R.S. § 32-2153(B)(1). Petitioner's actions and conduct as set forth in the Consent Order and Petitioner's misrepresentation on the application regarding payment of restitution show that Petitioner made substantial misrepresentations within the meaning of A.R.S. § 32-2153(B)(3). His conduct as set forth in the Consent Order constitutes dishonest dealings within the meaning of A.R.S. § 32-2153(B)(5). His conduct shows Petitioner is not a person of honesty, truthfulness and good character within the meaning of A.R.S. § 32-2153(B)(7).

DISPOSITION: Petitioner's license application denied.

#### H-1840

**Philip J. Buta**  
Glendale

DATE OF ORDER: December 20, 1996

FINDINGS OF FACT: In February 1994, the U.S. Department of Housing and Urban Development issued a letter of Limited Denial of Participation in which it found that Petitioner engaged in "fraudulent" FHA insured loan origination activities. In November 1994, HUD issued an Order barring Petitioner from further participation in HUD programs for a period of five years ending in February 1999.

In his license application to the Department of Real Estate, Petitioner disclosed that he previously held an Arizona real estate broker's license which had been suspended by the Department for six months because of the filing of a misleading renewal application. VIOLATIONS: Petitioner's conduct in submitting false certifications to lenders in conjunction with FHA loan origination activities shows he had made substantial misrepresentations in violation of A.R.S. § 32-2153(B)(3). Petitioner has been guilty of conduct constituting fraud or dishonest dealings within the meaning of A.R.S. § 32-2153(B)(5). His conduct shows he is not a person of honesty, truthfulness and good character within the meaning of A.R.S. § 32-2153(B)(7).

DISPOSITION: Petitioner's license application denied.

### CONSENT ORDERS

#### H-1849

**Consent Orders of Cynthia Rice and Michael M. Protega, in the matter of the subdivision law violations of Brent Paustian, and in the matter of the unlicensed real estate activity of Cynthia Rice, and in the matter of the real estate broker's license of Edmund J. Gorney, and in the matter of the real estate salesperson's license of Joyce Kroff and Michael M. Protega.**

Mesa, Apache Junction

DATE OF ORDERS: December 15, 1996 (Rice); February 3, 1997 (Protega).

FINDINGS OF FACT: PROtega is licensed as a real estate salesperson. Rice is a mortgage broker.

In December 1993, Paustian entered into an agreement to purchase one lot in Minnesota Manor Unit 3, a 28-lot subdivision in Maricopa County, and an option to purchase the remaining 27 lots. The addendum to the contract and an amendment to the escrow instructions made it clear the responsibility to amend the public report was Paustian's.

Paustian was assisted in his offer to purchase the lots by Kroff, an agent for Century 21 Mountain View Investments (MVI), which had the exclusive listing on the lots at the time. Kroff and the listing agent represented themselves in the contract and escrow instructions as "limited agents/facilitators."

From April to August 1994, Paustian sold seven lots in the subdivision as improved lots upon which homes would be built for purchasers. Kroff was co-listing agent with Protega for MVI on six of the lots and was the sole listing agent for one of them. Kroff and Protega were also the selling agents for six of these lots. Kroff was the exclusive selling agent for one lot.

All seven sales were done without a current public report and no receipt for a public report was signed by purchasers.

In January through August 1995, Rice assisted Paustian in marketing and selling the lots. Rice was not licensed by the Department of Real Estate.

On January 28, 1995, at Rice's suggestion, Rice and Paustian entered into a so-called Limited Partnership in which Rice, for the financial investment of one dollar, was allowed "contract negotiating powers on Minnesota Manor," would "incur no liabilities or financial encumbrances," and would "receive a negotiated fee for each house sold or consulting work provided." The agreement was not filed or registered with the Arizona Corporation Commission.

Paustian agreed to the arrangement with Rice so he could avoid paying a 6 percent sales commission to real estate licensees. Initially, Rice was paid 1 to 2 percent of the sales price. After a few sales, her compensation was increased to 45 percent of the profit to Paustian on each lot/house sold. Rice acted as a real estate broker in 12 sales.

From January 1995 until November 1995, 13 sales were made, 12 of which closed escrow. None of these sales were made with a current public report and no receipt for public report was signed by purchasers. Rice attests she believed she could legally conduct real estate for Paustian if she was an owner of the property and did not receive commissions.

In May 1996, Paustian was informed by a title company representative that he was offering lots for sale without a public report. Paustian contacted the Department and has been cooperative in investigating and resolving this matter.

Protega attests that as a brand new real estate licensee, he relied heavily on advice and counsel of Kroff, with whom he had been paired.

VIOLATIONS: Rice conducted real estate transactions for which a broker's license is required within the meaning of A.R.S. § 32-2101(6) and (42) and accepted compensation for that activity as defined in A.R.S. § 32-2101(13), in violation of A.R.S. §§ 32-2153(B)(6) and 32-2154(A). As an agent for Paustian and Minnesota Manor, she offered for sale and sold lots in a subdivision without a public report, in violation of A.R.S. § 32-2183(E).

Protega offered and sold lots in a subdivision without a public report, in violation of A.R.S. § 32-2183(E). He used contracts in conducting lot sales which did not contain required public report disclosure language as required by A.R.S. § 32-2185.06 and A.A.C. R4-28-803(A). He failed to secure a receipt for the public report from each purchaser, in violation of A.A.C. R4-28-803(B). He failed to protect and promote the interests of his client, in violation of A.A.C. R4-28-1101(A). He assisted a subdivider in violation of the provisions of Arizona Revised Statutes, Title 32, Chapter 20, in violation of A.R.S. § 32-2164. He violated the provisions of Arizona Revised Statutes, Title 32, Chapter 20 within the meaning of A.R.S. § 32-2153(A)(3), and was negligent within the meaning of A.R.S. § 32-2153(A)(22).

DISPOSITION: Rice shall pay a civil penalty in the amount of \$2,000; attend and complete the 90-hour salesperson prelicensure course; attend six hours of real estate classes, three hours in a course emphasizing the ways a Department issued license may be denied, suspended or revoked, and three in a subdivision course taught by a Department employee. She shall purchase a copy of the Arizona Real Estate Law Book.

Protega shall pay a civil penalty in the amount of \$500, and shall not apply to renew his real estate salesperson's license, nor apply as an original applicant, for a period of five years from entry of this Order.

#### H-1844

**Ray Wilkins and Zeus Services, Inc.**  
Florence

DATE OF ORDER: December 16, 1996

FINDINGS OF FACT: In January 1996, Zeus, a Nevada corporation, purchased an approximately 30-acre vacant land parcel in Pinal County. Wilkins, an unlicensed person, acted as a "corporate agent" in the transaction.

Between January 30 and March 9, 1996, Zeus sold or entered into sales agreements for seven parcels split from the original 30 acres to various purchasers. Zeus and Wilkins halted sales activities after contact by the Pinal County Planning & Development Department and the Department of Real Estate.

VIOLATIONS: Wilkins and Zeus:

a. Acted as subdividers within the meaning of A.R.S. § 32-2101(49); acted in concert to illegally subdivide the 30 acre parcel into seven parcels, in violation of A.R.S. § 32-2181(D); failed to provide a notice to the Commissioner prior to offering for sale the parcels, in violation of A.R.S. § 32-2181(A); offered for sale or sold parcels without first obtaining a public report, in violation of A.R.S. § 32-2183(E).

DISPOSITION: Wilkins and Zeus Services shall:

a. Offer rescission of sale to each of the buyers.

b. Reconfigure the seven parcels created to total five parcels, each parcel a minimum of two acres, and with the following requirements of Pinal County:

i. Each parcel shall have a recorded deed restriction that prohibits the parcel from being further split for 10 years from the time the land deed with restriction is recorded with the Pinal County Recorder.

ii. Parcels 1, 2 and 3 shall have recorded with their land deeds a minimum 25-foot-wide right-of-way easement for ingress, egress, utilities and drainage, from each parcel, to an approved public road or public road easement.

iii. Each of the five parcels' metes and bounds descriptions shall comply with the descriptions provided as an attachment to this Consent Order.

c. Pay a civil penalty in the amount of \$5,000.

Wilkins shall additionally purchase a copy of the Arizona Real Estate Law Book and take 12 hours of real estate continuing education courses. Three hours shall be in a course emphasizing the ways in which a Department issued license may be denied, suspended or revoked, and three shall be in a subdivisions course taught by a Department employee.

#### H-1815

**Widger and Associates of Arizona, Inc., and Marion D. Widger**

Tempe

DATE OF ORDER: December 31, 1996

FINDINGS OF FACT: In May 1976, the Department issued Widger an Arizona real estate broker's license. In June 1994, Widger signed a Consent Order with the Department in stipulated settlement of real estate law violations by Widger. One provision of that Order was a two-year suspension of Widger's broker's license, and that of his firm, Central Valley Realty Company, to end May 31, 1996. During the time his license was suspended, Widger was not authorized to conduct, and agreed not to conduct, any activities requiring a real estate license.

The Order also provided that the Department could summarily suspend Widger's license if he failed to comply with terms or conditions of the Order.

On June 1, 1994, an original application for a corporation/partnership license was submitted to the Department for Widger and Associates of Arizona, Inc., Widger as the incorporator, the secretary/treasurer and the statutory agent. On the application, Marion Widger Family Partnership was identified as Widger and Associates' property management trust account. Widger and Associates also conducted business as "Widger and Associates." Additionally, as a self-employed broker in the 1980s, and early 1990s, Widger conducted business under the trade name of Widger and Associates.

Questions on the application form ask the corporation/partnership applicant (the "entity") for background information concerning the entity's des-

ignated broker, officers, partners and directors, anyone who owns 10 percent or more of the stock in the entity, or who exercises control over the entity. The application submitted by Widger and Associates contained "no" answers to the questions which ask whether any of these persons or entities have ever:

- a. Had a business or professional license suspended or revoked.
- b. Entered into a consent decree, or had a temporary or permanent injunction imposed against them.
- c. Been found guilty in civil or criminal proceedings in which the subject matter was real estate.

On July 26, 1994, Widger and Associates submitted an application for renewal of the entity license. This application also contained questions which asked whether the designated broker, any officer, director, partner or shareholder owning 10 percent or more of the stock in the entity, or who exercises control over the entity, had, since licensure or last renewal, ever had a business or professional license suspended or revoked; had entered into a consent decree, or had a temporary or permanent injunction imposed against them; or had been found guilty in civil or criminal proceedings in which the subject matter was real estate. These questions were all answered "no."

Further investigation of the operations of Widger and Associates reveals that Widger was a signer on Widger and Associates' property management trust account and on its general account, he wrote checks on these accounts and was paid through the general account. Widger personally interviewed, hired and established the fee arrangements for Widger and Associates' designated broker. Widger, as the general partner for ACI Holdings, worked out of Widger and Associates' offices while managing a number of other limited liability companies, general and limited partnerships for approximately 300 investors. Widger and Associates and ACI Holdings shared office space. The primary activity of Widger and Associates from June 1, 1994 to June 27, 1996 involved the management of the building in which ACI Holdings and Widger and Associates were located, which is owned by Widger and family members who comprise the partners of the Marion Widger Family Partnership.

On June 27, 1996, the Department, pursuant to A.R.S. §§ 32-2153(B)(1), (D) and 32-2157, issued an Order summarily suspending the broker's licenses of Widger and Widger and Associates.

Widger attests he believed his involvement in Widger and Associates' real estate activities did not require a real estate license and that failure to disclose the suspension of his and his former corporation's broker's licenses when applying for a broker's license for Widger and Associates was inadvertent and not intended to deceive the Department's licensing personnel.

**VIOLATIONS:** Widger and Associates procured a real estate broker's license by filing an application which was false and misleading, in violation of A.R.S. § 32-2153(B)(1). As an officer in and owner of Widger and Associates, Widger knew or should have known that the real estate broker's license application for Widger and Associates contained responses which were false or misleading, in violation of A.R.S. § 32-2153(B)(1). Widger's control and management of and activity on behalf of Widger and Associates technically constitutes unlicensed activity within the meaning of A.R.S. §§ 32-2122(B) and 32-2153(B)(6).

**DISPOSITION:** The real estate broker's license of Widger and Associates of Arizona, Inc., is hereby revoked. The real estate license of Marion D. Widger is suspended through December 31, 1996. From and after that time, he may make original application for an associate broker's license, which shall be provisionally issued for two years based on the following:

- a. Widger's designated broker, who shall not be a family member, shall make quarterly reports to the Department summarizing Widger's real estate activities and compliance with real estate laws and the National Association of Realtors® Code of Ethics.

- b. Widger shall not be a signer on a broker trust account.

- c. Widger's real estate activities shall not constitute nominal employment within the meaning of A.A.C. R4-28-303(G).

- d. Widger's real estate activities in the immediate past five years shall qualify for the broker experience requirement.

Widger shall not, in the future, use "Widger and Associates" in any real estate related activity or business as or part of any fictitious name, trade name or entity name, nor shall Widger exercise control in any real estate related entity so named.

Widger shall purchase a copy of the Arizona Real Estate Law Book. He shall take 12 hours of real estate continuing education in addition to hours required for license renewal which shall include a course emphasizing the ways in which a Department issued license may be denied, suspended or revoked, and courses in ethics, agency and Commissioner's Rules.

#### H-1853

**Irma F. Hernandez  
Bullhead City**

**DATE OF ORDER:** January 2, 1997

**FINDINGS OF FACT:** Hernandez was issued a real estate salesperson's license in June 1989. In June 1995, she submitted a timely renewal application in which she disclosed criminal charges pending against her.

In May 1995 she pleaded no contest to, and in June 1995 was convicted of, Filing a False Instrument, a class 1 misdemeanor.

In 1990, she leased a defunct Bullhead City restaurant, known as Park Place, from Mohammedruss "Russ" Abuhamdieh to open a restaurant which she named "Solid Gold." She negotiated the purchase of a class 6 liquor license on November 9, 1990 for \$25,000. Abuhamdieh loaned Hernandez \$100,000 for the restaurant and the liquor license.

On November 28, 1990, she reorganized as Dream River, Inc. On December 2, 1990, she filed an application with the Arizona Department of Liquor License Control (DLLC) to transfer the license to Dream River. On the application she identified herself as "President, Treasurer and Director," and Lana Bobick as "Secretary and Director." No other individuals were identified as controlling Dream River.

While the liquor license transfer application was pending, Hernandez entered into a lease agreement on January 1, 1991 with Abuhamdieh in which Dream River, Inc. would operate Solid Gold as an "adult entertainment club" for a period of one year, with an option to extend.

At a January 21, 1991 meeting of the Mohave County Board of Supervisors, the Board recommended denial of the application. DLLC scheduled its hearing for April 5, 1991, however, Hernandez withdrew her application prior to the hearing. She then turned over the entire restaurant operation to Abuhamdieh, who operated it as a nude dance club under the name of Dream River. Hernandez assisted Abuhamdieh in its operation until mid-1992.

**VIOLATIONS:** Petitioner's conviction for Filing a False Instrument has negative implications with respect to her honesty, truthfulness and good character within the meaning of A.R.S. § 32-2153(B)(7).

**DISPOSITION:** Petitioner's real estate salesperson's license is renewed and is hereby suspended retroactive to November 1, 1996 and shall continue suspended through January 31, 1997, whereupon she may apply for license reinstatement pursuant to A.R.S. § 32-2131.

She shall take 12 hours continuing education hours in addition to hours required for license renewal including a course which emphasizes the reasons for which a Department issued license may be denied, suspended or revoked, and courses in agency, ethics and Commissioner's Rules.

As a condition of reinstatement, she shall agree that for the next two years of cumulative active licen-

sure:

- a. She may not be a signer on a broker trust account.
- b. Her designated broker shall submit quarterly reports to the Department about her real estate practice, including her adherence to the National Association of Realtors® Code of Ethics. She shall purchase a copy of the Arizona Real Estate Law Book.

#### H-1846

**Ryan Ellsworth, Gerald Perkins and Perell Builders, Inc.**

**Show Low**

**DATE OF ORDER:** January 3, 1997

**FINDINGS OF FACT:** Ellsworth and Perkins are unlicensed person who subdivide properties and build homes. From February 1985 until February 1989, Ellsworth held an Arizona real estate salesperson's license.

Perell Builders is an Arizona corporation owned by Ellsworth and Perkins through which they offer for sale lots in subdivisions and construct homes for lot purchasers.

#### ELKINS ACRES

Elkins Acres is a 58-lot mobile home park subdivision in Show Low purchased by Ellsworth and Perkins in February 1990. In late 1994, they decided to formally subdivide Elkins Acres as an improved lot subdivision. A tentative plat was submitted to the City of Show Low for consideration. Prior to approval of the final plat, and before making application for a public report, Ellsworth decided to lease-purchase lots to create cash flow. Between June 1995 and February 1996, Ellsworth entered into five lease-purchases, collecting down payments and establishing monthly payments on carry-back financing on the lot and a manufactured home provided by Perell Builders.

#### TIMBER MEADOWS

Timber Meadows is a 39-lot subdivision in Navajo county. In February 1996, Ellsworth and Perkins submitted an application for public report to the Department in which it was represented:

- a. Only improved lot sales would be made.
- b. No sales were made prior to application.
- c. No sales were intended to be made before completion of the application.
- d. Subdivision lot owners were Ellsworth and Perkins.

In April 1996, a public report was issued for Timber Meadows. Upon questioning by a Department representative about the status of Perell Builders, Ellsworth responded in a March 1996 letter, "Perell Builders is not an incorporation. It is owned by Gerald Perkins. Gerald Perkins and Ryan Ellsworth will be selling the homes as the escrow instructions indicate.

In February and March 1996, Perell Builders conveyed six lots in Timber Meadows to purchasers without a public report. In April and May 1996, Perell Builders conveyed six more lots in Timber Meadows to purchasers.

#### HANSEN LANE

Hansen Lane is a 10-acre parcel in Pinetop-Lakeside which has been split into at least 11 parcels. Survey plans prepared in June 1996 and submitted to Pinetop-Lakeside in August 1996 show at least nine new sewer hook-ups for Hansen Lane. A plat map submitted to Pinetop-Lakeside showed 11 parcels.

#### VIOLATIONS:

##### ELKINS ACRES:

Ellsworth and Perkins offered for sale and conveyed by lease-purchase agreements lots without first applying for or being issued a subdivision public report, in violation of A.R.S. §§ 32-2181(A) and 32-2183(E).

##### TIMBER MEADOWS

Ellsworth and Perell Builders:

- a. Procured a public report by submitting documen-



tation to the Department which was both false and misleading, in violation of A.R.S. §§ 32-2153(B)(1) and 32-2161(A).

b. Offered for sale and sold lots before the issuance of a public report, in violation of A.R.S. §§ 32-2181(A) and 32-2183(E).

c. Materially changed the plan to sell lots after submission of the plan to the Commissioner without notifying the Commissioner, in violation of A.R.S. §§ 32-2184(A).

#### HANSEN LANE:

Ellsworth acted in concert with others and by himself to illegally subdivide real property, in violation of A.R.S. § 32-2181(D).

**DISPOSITION:** Ellsworth is assessed a civil penalty in the amount of \$10,000. Perrell Builders is assessed a civil penalty in the amount of \$5,000. Ellsworth shall take 24 hours, and Perkins shall take six hours, of real estate continuing education courses. Each shall minimally take a subdivisions course taught by a Department employee and a course emphasizing the reasons for which a Department-issued license may be denied, suspended or revoked. Each shall purchase a copy of the Arizona Real Estate Law Book.

Ellsworth and Perkins shall offer rescission to each lease-purchaser in Elkins Acres and shall apply for and have issued a public report on Elkins Acres prior to offering any further lots for sale or lease.

Ellsworth and Perkins shall offer rescission to any purchasers of lots in Timber Meadows who purchased the lots prior to the issuance of a public report, and shall amend the public report to reflect the correct ownership of the Timber Meadows lots.

Ellsworth and Perkins shall comply with all applicable subdivision requirements of the Town of Pinetop-Lakeside in the further development of Hansen Lane (aka Kristi Lane), coordinating such compliance efforts with the other participants in the subdivision, and shall apply for a public report.

#### H-1847

**John F. Murtaugh, Stuart P. Krauss and Best Residential Real Estate, an Arizona partnership, and in the matter of the real estate salesperson's license of Merle G. Osment**

#### Tucson

**DATE OF ORDER:** January 10, 1997

**FINDINGS OF FACT:** Osment was first licensed as a salesperson in July 1976. In February 1995, he became employed by Best Residential Real Estate (Best Companies). His license expired March 31, 1995, but he did not submit a renewal application until October 11, 1995. At that time, he submitted a signed affidavit that he had engaged in no real estate activity while his license was expired. In fact, he had engaged in numerous transactions and had received commissions. Based on his affidavit, his license was renewed. Osment did not submit a hire form for Best Companies, and therefore was on inactive status.

Krauss, the owner of Best Companies, is a licensed real estate broker and was Best Companies' designated broker from February 1995 until April 15, 1996. Krauss resumed the office of designated broker on August 2, 1996. He is the current designated broker.

Murtaugh, a licensed real estate broker, was Best Companies' designated broker from April 16, 1996 until August 2, 1996.

In August 1995, when Krauss was in the process of reviewing records preparatory to resuming the office of designated broker, he could not find a current license for Osment. He checked with the Department and found that Osment had not been hired during his October 11, 1995 renewal, but had been paid for numerous real estate transactions after that date.

As a result of Osment's unlicensed activity, compensation was paid to Osment and Best Companies

for approximately 33 transactions. Payment of commissions for five additional transactions is pending disposition of this matter. Commissions for two transactions were paid to Murtaugh while he was Best Companies' designated broker.

Since the discovery of Osment's unlicensed activity, Krauss and Murtaugh have cooperated fully with the Department.

#### VIOLATIONS: Osment:

a. Procured a real estate license by filing false and misleading renewal application documents, in violation of A.R.S. §§ 32-2153(B)(1), (B)(3) and 32-2161(A).

b. Engaged in unlicensed real estate activities and accepted compensation for those activities without being properly licensed, in violation of A.R.S. §§ 32-2153(A)(6), (A)(10), (B)(6) and 32-2155(A).

c. Failed to timely renew his salesperson's license, in violation of A.R.S. § 32-2153(A)(14).

d. Therefore violated provisions of Arizona Revised Statutes, Title 32, Chapter 20, in further violation of A.R.S. § 32-2153(A)(3), and was negligent in actions requiring a real estate license, in violation of A.R.S. § 32-2153(A)(22).

#### Krauss and Murtaugh:

a. Employed and paid an unlicensed individual for real estate transactions in which Best Companies received compensation, in violation of A.R.S. §§ 32-2153(A)(6), (A)(10) and 32-2155(A) and (B).

b. Failed to exercise reasonable supervision over the activities of a salesperson, in violation of A.R.S. § 32-2153(A)(21).

c. Therefore violated provisions of Arizona Revised Statutes, Title 32, Chapter 20, in further violation of A.R.S. §§ 32-2153(A)(3), and were negligent in actions requiring a real estate license, in violation of A.R.S. § 32-2153(A)(22).

**DISPOSITION:** Osment's real estate salesperson's license is suspended until March 1, 1997. It shall be reinstated upon completion of all application requirements and compliance with the terms of this Consent Order. Osment shall:

a. Pay a civil penalty in the amount of \$5,000.

b. Take 24 hours of continuing education courses.

c. Make monthly payments to reimburse the sellers in the 33 transactions, each monthly reimbursement to be at least \$1,000, the aggregate total reimbursement being \$30,490.

d. Refuse to accept \$6,122 in commissions from the five transactions he co-brokered in which payment has been withheld pending disposition of this matter.

e. Purchase a copy of the Arizona Real Estate Law Book.

Best Companies, Krauss, and Murtaugh shall each pay a civil penalty in the amount of \$1,000.

#### Krauss and Murtaugh shall each:

a. Take 12 hours of continuing education.

b. Purchase a copy of the Arizona Real Estate Law Book.

Best Companies and Murtaugh shall reimburse sellers in the 33 transactions:

a. Best Companies \$19,965

b. Murtaugh \$527.

Best Companies shall refuse to accept compensation in the five transactions where compensation remains unpaid, in the amount of \$5,729.

#### H-1855

**James J. Miller**

**Eugene, Oregon**

**DATE OF ORDER:** January 14, 1997

**FINDINGS OF FACT:** Miller was issued an original real estate salesperson's license on March 13, 1995. He failed to complete six hours of real estate contract law and contract writing education within 90 days of licensure as required by A.A.C. R4-28-401(E). His license was summarily suspended on November 21, 1995. He did not request a hearing on the suspension, which therefore became incontestable.

In January 1996, the Department received notice from Miller that on November 27, 1995, he entered

into a Stipulated Order with the Oregon Real Estate Agency in which he admitted to unlicensed activity through his company, Genesis Management, Inc. In the Order it is noted that "Miller's actions were the result of negligence." Miller was ordered to pay a fine of \$2,276. He did not report this administrative action to the Department within 10 days as required by A.A.C. R4-28-301(C).

Attempts to contact Miller were initially frustrated because he failed to notify the Department of his address and telephone number change within 10 days as required by A.A.C. R4-28-301(F).

**VIOLATIONS:** Miller failed to complete the real estate contract law and contract writing course, in violation of A.A.C. R4-28-401(E); failed to timely notify the Department of the Stipulated Order, in violation of A.A.C. R4-28-301(C); Failed to timely notify the Department of his change of address and telephone number, in violation of A.A.C. R4-28-301(F); therefore was negligent within the meaning of A.R.S. § 32-2153(A)(22); and violated the provisions of Arizona Revised Statutes, Title 32, Chapter 20, and the Commissioner's Rules, in further violation of A.R.S. § 32-2153(A)(3).

**DISPOSITION:** Miller's real estate salesperson's license is suspended until November 21, 1997. After that date he may renew his license pursuant to A.R.S. § 32-2130 if he has satisfied the requirements of A.A.C. R4-28-401(E) and any other requirements. He shall pay a civil penalty in the amount of \$500.

#### H-1856

**Mary F. Herzog**

**Tucson**

**DATE OF ORDER:** January 24, 1997

**FINDINGS OF FACT:** In November 1996, Herzog, formerly known as Mary Francis McCain, Mary Francis Kirk and Mary Francis Martin, filed an application for an original real estate salesperson's license. As part of her application she disclosed a felony conviction.

On August 14, 1992, she pleaded guilty in Pima County Superior Court to Attempting to Possess Marijuana for Sale Over Eight Pounds, a class 4 felony. She was sentenced to four years' probation.

In mitigation, she attests that it was a financial dilemma regarding her son's medical condition which caused her act of felony; that she is remarried and alleges to be financially secure with no possibility of repeating the same mistake; has completed all terms of probation and appears to be a law-abiding citizen; and has cooperated fully with the Department regarding this matter.

**VIOLATIONS:** Herzog was convicted of a felony within the meaning of A.R.S. § 32-2153(B)(2). Her conduct leading to her conviction demonstrates she was not a person of honesty, truthfulness and good character, within the meaning of A.R.S. § 32-2153(B)(7).

**DISPOSITION:** Herzog shall be issued a three-year provisional real estate salesperson's license. During all periods of active licensure, up to three years' cumulative active licensure, Herzog shall comply with the following terms and conditions:

a. Each designated broker who wishes to employ Herzog shall file with the Department a signed statement certifying that the broker has received a copy of this Order and agrees to act as Herzog's practice monitor. The practice monitor shall be responsible for reporting any behavior or conduct which violates real estate statutes or rules, or any precepts or standards as prescribed by the National Association of Realtors® Code of Ethics.

b. Herzog shall abstain completely from the use of any illegal drugs or controlled substances unless taken pursuant to a valid prescription and the orders of a medical doctor.

c. She shall submit to urine or blood tests, randomly drawn, not exceeding two tests in any 30-day period, at the request of the Compliance Officer. Such testing shall continue for two years commencing with the date of active licensure.



## Are your real estate ads legal?

*Continued from page 2*

An ad (including advertising on the Internet) promoting the services of "John Smith, Sales Associate, Century 21," does not conform to the Rule. "John Smith, Sales Associate, Century 21-Bottom Line Realty" does. The Department would also like to see (but does not require) "Harry Green, Designated Broker" somewhere in the ad.

### *Example 2:*

R4-28-502(F) states, "All advertising shall be under the direct supervision of the employing and, if applicable, the designated broker."

One of the clearest violations of this Rule the Department has seen is when an Arizona real estate salesperson creates an Internet web page which lists only his name and e-mail address.

In another example, a salesperson set up an office located outside his broker's office, complete with a secretary and a phone system which was independent of the broker's phone system. The Department became aware of the situation when it received complaints that the salesperson was operating his own real estate business. He had created an unlicensed branch office with the broker's knowledge and permission. Because the office was physically removed from the employing broker's office, and had a separate phone system, there was no way the employing broker could "reasonably supervise" the activities of this salesperson.

After the broker was admonished by the Department, the necessary branch office license was obtained, and other infractions were corrected.

If an advertisement contains a telephone number other than the employing or designated broker as shown in Department records — a salesperson's or associate broker's home phone, for instance — the ad must also display the telephone number of the employing or designated broker. For instance, if Sally Black wanted to run ads listing her home phone number, the ad should state: Sally Black, Sales Associate (602) 555-1234. Middle Ground Realty, (602) 555-9876.

### *"Teams" and "Groups"*

When using "Team" or "Group" in any advertising, the full name of each

## Applications for broker's license jump 47% in fiscal 1996

There was a significant increase in the number of people applying for a real estate broker's license in fiscal year 1996 (July 1, 1995 - June 30, 1996) over previous years, according to statistics furnished by the Department's Education and Licensing Division.

The Department received 932 applications for an original (first-time) broker's license in 1996, compared to 631 in the year before, a 47.4 percent increase. The number of applications had remained nearly constant in the previous four years.

The number of original real estate salesperson license applications increased only 1.4 percent in 1996 compared to 1995, but has increased 7.9 percent between 1992 and 1996.

The total number of active and inactive real estate salespersons and brokers increased 9 percent during the

five years, from 39,019 in FY 1992 to 42,854 in FY 1996.

The number of active salespersons increased 14.3 percent over the past five years while the number of active brokers increased nearly 28 percent. The total number of active and inactive licensees increased 9.8 percent between 1992 and 1996. In the same five years, the number of inactive salespersons decreased 20 percent from 10,569 to 8,804. The number of inactive brokers increased 67 percent from 451 to 753.

The following statistics do not show the number of expired licensees, those who failed to renew their licenses and whose licenses would have terminated at the end of a one-year grace period unless renewed. The total number of expired licenses declined 61 percent over the five years, from 8,297 in 1992 to 5,096 in 1996.

Fiscal Year	1992	1993	1994	1995	1996
Original Sales	3,759	3,436	4,085	4,000	4,056
Original Broker	638	633	601	631	932
Total Applications	4,397	4,069	4,686	4,631	4,988
Active Sales	18,169	18,224	18,516	20,122	20,775
Inactive Sales	10,569	9,199	9,614	8,606	8,804
Total	28,738	27,423	28,130	28,728	2,9579
Active Broker	9,830	9,808	11,937	12,206	12,522
Inactive Broker	451	514	731	687	753
Total	10,281	10,322	12,668	12,893	3,275
Total Active and Inactive	39,019	37,745	40,798	41,621	42,854
Full-time Employees	76	72	67.5	68	67.75
Department Appropriation*	\$2,775,500	\$2,741,100	\$2,547,400	\$2,922,000	\$2,870,000

\* Funds available to run the Department, appropriated by the Legislature and financed by license, subdivision and other fees.

team member must be displayed. For instance, you could display "The Action Team, Peter, Paul and Mary" if you show Peter, Paul and Mary's last names positioned in such a way that the connection is obvious.

An Internet web page should show the last name on each page on which the "team" name is displayed. The bottom of each web page would be

acceptable.

Gurley Street Realty in Prescott has constructed a web page that advertises a "team" and does it very well. You'll find Gurley Street Realty at <http://www.prescott4you.com/> Check the bottom of the first page for the "Help-U-Buy" team, then look at the very bottom of the page. Our compliments to Bob Townsend.

# John King named Deputy Commissioner

*Continued from page 1*

commanding officer of a technical intelligence unit.

John moved to Phoenix in 1965 and practiced law with several private law firms, including his own, until September 1995 when he began working for the Department of Insurance.

While practicing law, he served as legal counsel to the House Majority Leader during the regular and special session of the 1968 Legislature. He was elected to the Legislature in 1984 and served two terms as a State Representative.

## Megan's Law

*Continued from page 1*

affected communities and individuals that a registered sex offender, deemed to pose a danger to the community, resides in the area; police may notify communities of less dangerous sex offenders. (The federal "Megan's Law" is named for Megan Kanka, a 7-year-old New Jersey girl who was raped and killed in 1994 by a twice-convicted sex offender who had moved in across the street.) Arizona's law applies only to those sex offenders who register in Arizona after the effective date of the law, June 1, 1996; the disclosure requirements do not apply to sex offenders who registered prior to that date.

Here's how it works: When a convicted sex offender is released from prison, is placed on probation, or moves to Arizona from another state, the state agency responsible for that individual must notify the police department in the city where the offender plans to reside of the offender's release, probation, or relocation. Thereafter, the local law enforcement agency must "rate" the offender based, in part, on certain presumptive guidelines to determine the extent to which the offender poses a threat to the public. For example, the police consider the nature of crimes of which the offender is guilty and the offender's modus operandi. The most dangerous sex offenders are classified as level three offenders; the least dangerous are classified as level one offenders.

With regard to level-three offend-

## Licensees suspended for failure to attend Contract Writing class

Commissioner's Rule R4-28-401(E) requires each newly licensed real estate salesperson to take six hours of continuing education in real estate contract law and contract writing within 90 days of licensure.

A.R.S. § 32-2124.01 requires all real estate brokers to attend a Broker Audit Clinic within 90 days of original licensure, and once during every four year period after initial attendance.

Contract Writing classes are offered by most Arizona real estate schools. Broker Audit Clinics are conducted by the Department in Phoenix and Tucson, and by special arrangement in rural communities. A schedule of Broker Audit Clinics can be found on page 4.

Licenses of those who fail to meet these education requirements are summarily suspended. The suspension is lifted when satisfactory evidence of attendance is furnished to the Department within 30 days.

The following licensees received summary suspensions on the dates and for the reason indicated. A list of such suspensions will be published in each issue of the *Arizona Real Estate Bulletin*:

Name	Suspension Date	Reason
Adkins, Tony L.	1/30/97	Contract Writing
Anstett, Craig P.	12/20/96	Contract Writing
Baumer, Shelly L.	1/30/97	Contract Writing
Brown, Brian B.	12/20/96	Contract Writing
Brown, David G.	12/20/96	Contract Writing
Campbell, Diana V.	12/20/96	Contract Writing
Deselms, Stephen E.	12/20/96	Contract Writing
Dolce, Anthony D.	1/30/97	Contract Writing
Dort, Martha L.	1/30/97	Contract Writing
Erickson, Eric L.	12/20/96	Contract Writing
Fould, Michael G.	12/20/96	Contract Writing
Goodstein, David H.	2/12/97	Audit Clinic
Gordon, Donna J.	12/20/96	Contract Writing
Hickey, Jeffrey T.	1/30/97	Contract Writing
Larsen, Brad	12/20/96	Contract Writing
Mannix, Elizabeth A.	12/20/96	Contract Writing
Mayes, Douglas E.	1/30/97	Contract Writing
Miller, Kimberly J.	12/20/96	Contract Writing
Murphy, Paul T.	1/30/97	Contract Writing
Newman, Michael J.	12/20/96	Contract Writing
O'Brien, Partick M.	12/20/96	Contract Writing
Pellam, Tina M.	12/20/96	Contract Writing
Perkins, Keith E.	12/20/96	Contract Writing
Preece, Josephine C.	12/20/96	Contract Writing
Randel, Randy D.	12/20/96	Contract Writing
Schultz, Robert J.	1/30/97	Contract Writing
Taylor, Charley	12/20/96	Contract Writing
Troutner, Michael J.	12/20/96	Contract Writing
Vuncannon, Mark D.	12/20/96	Contract Writing
Young, Brian P.	12/20/96	Contract Writing

ers, the police must notify affected neighbors, schools, community groups and prospective employers of the offender's residence in the area. Law enforcement officials may provide the same notification for level-two offenders. The police may disclose information about a level-one offender only to the offender's prospective employers, and to those with whom the offender resides.

In most cities, the police notify communities that a level three or level two offender resides in, or has moved into an area, by going door to door in the area surrounding the offender's home, and delivering a flier which includes the offender's picture, name, address, vehicle, and a description of the crimes for which the offender has been convicted. The flyer also provides a telephone number to call for more information. The area encompassed by

the notification varies from city to city. However, in most cities, concerned individuals can call or visit their local police precinct to inquire whether a registered sex offender, who has been the subject of a notification, resides in the area. Aside from public court records, information regarding registered sex offenders who have not been the subject of a notification remains unavailable to the public.

## False Claims

*Continued from page 1*

Gene Mundy and Mundy Realty had worked with the Snipes on other contracts and had similar contracts to Cash, Banker & Hale's contracts. Mundy previously settled all potential claims for improper billing for \$200,000.

# Acquiring real property rights in Sonora

*Recently, the Arizona-Mexico Commission published a pamphlet titled "Acquiring Real Property Rights in Sonora, Mexico." The pamphlet will be handed to U.S. residents crossing the border into Sonora, Mexico, and is available from the Arizona Mexico Commission, 1700 W. Washington St., #180, Phoenix, AZ 85007. We feel the text of the brochure will be of interest to our readers. Ed.*

Non-Mexican citizens may, under certain conditions and obligations, acquire ownership or use rights on real properties located in Mexico.

When considering the acquisition of real property in Mexico, the actual geographical location of the property will determine whether the real property can actually be owned in fee simple title, or must be limited to the right to use the property for a maximum number of years.

In the so-called Restricted Area, (100 kilometers from the Northern and Southern borders and 50 kilometers from seashores), foreign citizens can acquire only the rights of use and enjoyment of real properties located therein through Real Estate Trusts. In this case, a trust is a Mexican bank service through which the trustor (seller) transfers to the bank (trustee) the ownership of real property, which will insure to the benefit of an individual (buyer) who becomes the beneficiary of the trust.

The requirements for a Mexican Bank to hold a Trust Agreement are as follows:

To have the title of the urban real estate property that will be the foundation for establishing the trust.

To obtain a permit from the Department of Foreign Affairs.

To officially record the Public Instrument before a Mexican notary public (Notario) and to register it in the Public Registry of Property.

Outside the Restricted Area, for instance in the city of Alamos, Sonora, foreign citizens can acquire full, fee simple ownership of real property provided such properties are urban, a previous permit has been obtained

from the Department of Foreign Affairs and the appropriate use has been legally defined and recorded before a notary public for its subsequent registration in the appropriate Public Registry of Property.

Mexican notaries public are attorneys at law authorized to lawfully authenticate legal acts and judicial facts. They can also advise buyers and sellers of the proper means to attain legal compliance, as well as that of calculating, withholding and paying the applicable taxes.

In Sonora's main cities, there are experienced notaries public who can advise interested parties on real estate transactions and ownership.

Mexico has legal procedures and documents similar to those used in the United States to protect the parties in real estate transactions. An example is the Conditional Deposit, similar to the escrow account which, in Mexico, is a fiduciary operation through which the Mexican bank receives monies or securities which it invests or administers, as the case may be, which in due time will be delivered to the beneficiary, in accordance with the Deposit Agreement. For instance, in the case of a Conditional Deposit for a Trust Operation, the price of the operation will be delivered to the trustee, so he may deliver it to the trustor once the Public Instrument of the real property object of the trust has been recorded before a notary public. Furthermore, if the Public Instrument has not been issued within a specified period of time, the amount deposited will be refunded to the proposed beneficiary of the trust and the transaction will be cancelled.

The most frequent questions posed on these subjects are related to the cost of such services. With regard to taxes, the establishment of the trust, as well as the transfer of rights to the beneficiary of the trust, generate two taxes; income taxes, to which the party transferring such rights will be subjected and the transfer of title taxes, to be paid by the party acquiring the trust. The former must be estimated, withheld and paid by the notary public. The latter, using the State of Sonora as an example, amounts to 2 percent of the consideration price or appraisal, whichever is higher. This is the rate in force for 1996. In subsequent years, the rate itself is subject to change.

In a typical transaction for lots or single family homes, normal annual costs include the payments for real estate taxes, potable water, sewage system and electricity services. In these cases, real properties have individual meters reflecting the consumption, which then becomes the basis for estimating the appropriate payment.

In the case of condominiums, the board of directors at the annual homeowner's meeting has the authority to discuss and approve the annual budget which will include maintenance fees and in some cases, contingency funds. In this case, it is always prudent for the individual unit owner to review the articles of incorporation under the Regime for Condominium Properties and its attendant regulations, establishing the limitations regarding the use of common areas, such as swimming pools, halls, office, etc. and the use of the units: the number of occupants, the situation regarding allowance for pets, etc.

In Sonora, there is a law regulating the time-share system. It is always established by means of a public instrument that must be registered in the Public Registry of Property. Before purchasing any time share space, it is advisable for the time-share buyer to review the aforementioned documents in order to become familiar with the rights and obligations of parties acquiring time-share properties.

Once again, we underscore the importance of notaries public in conducting real estate transactions in Mexico, as well as the need for foreign citizens to establish a trust (fideicomiso) when acquiring real properties located in the Restricted Areas.

The United States' Departments of Real Estate do not regulate real property transactions in Mexico. Most U.S.A.-based Departments' regulatory authority is limited to two areas:

1. Proper real estate licensure is required of anyone who directly advertises Mexico real property to U.S. residents, unless, of course, exempt by law.

2. Developments, such as planned communities, time-shares and condos, require a public report before they may

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# Acquiring Sonoran property rights

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be promoted in Arizona and many other states except California. In such cases, the public report on the project must be applied for by the developer or his representative and written and issued by the appropriate State Department of Real Estate. If you reside in a state other than California and become interested in a piece of subdivided property, time share, and/or condominium, be sure to ask the developer for a copy of the public report on the project.

The Arizona-Mexico Commission and the Comisión Sonora-Arizona gratefully acknowledge the assistance of Jerry Holt, Arizona Real Estate Commissioner, Carlos Emmermann, Bank One Senior Vice President, International Division, and Francisco (Paco) Manzo Taylor, Abogado/ Attorney-at-Law, in the development of this brochure, as well as Bank One for its financial assistance in its publication and distribution. This publication is for informational purposes only. The prospective purchaser should not rely on this publication as a definitive guide to Mexican real estate law and real estate transaction requirements. In every instance, the prospective purchaser is urged to review any proposed transaction with private counsel.

## How to contact ADRE by phone, fax and modem

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